By Mr. BIDEN (for himself, Mr. THURMOND, Mr. KENNEDY and Mr. HATCH):

S. 1822. A bill to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; placed on the calendar.

By Mr. STAFFORD (by request):

S. 1823. A bill to amend title 23, United States Code, to provide for the construction of new toll highways and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRANSTON:

S. 1824. A bill to amend the Federal Aviation Act of 1958 to require that capacity levels be established at certain airports; to the Committee on Commerce, Science, and Transportation.

By Mr. BYRD (for Mr. CRANSTON (for himself and Mr. D'AMATO)):

S.J. Res. 209. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. HATCH, Ms. MIKULSKI, Mr. PELL, Mr. DOLE, Mr. DODD, Mr. GLENN, Mr. CRANSTON, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. SIMON, Mr. MOYNIHAN, Mr. CONRAD, Mr. MATSUNAGA, Mr. CHAFEE, Mr. KERRY, Mr. WEICKER, Mr. THURMOND, Mr. BURDICK, Mr. DECONCINI, Mr. LEVIN, Mr. ADAMS, Mr. WARNER, Mr. INOUYE, Mr. RIEGLE, Mr. BRADLEY, Mr. BOND, Mr. MITCHELL, Mr. PROXMIRE, Mr. DIXON, Mr. STAFFORD, Mr. NUNN, Mr. DOMENICI, Mr. GARN, Mr. SHELBY, Mr. PRYOR, Mr. D'AMATO, Mr. BENTSEN, and Mr. SANFORD):

S. Res. 303. A resolution to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987; to the Committee on the Judiciary.

By Mr. LEAHY; from the Committee on Agriculture, Nutrition, and Forestry:

S. Res. 304. An original resolution to increase the amount allocated to the Committee on Agriculture, Nutrition, and Forestry by S. Res. 80 relating to committee funding for fiscal year 1988; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 305. A resolution to direct the Senate legal counsel to represent and to authorize the production of documents by Philip Q. Cohen in the case of Moreno versus Small Business Administration, et al.; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 1818. A bill to make requirements for the preparation, and transmittal to the Congress, of Presidential findings for certain intelligence operations; to provide mandatory penalties for deceiving Congress; and to establish an Independent Inspector General for the CIA; to the Select Committee on Intelligence.

NATIONAL SECURITY REFORM ACT

Mr. SPECTER. Mr. President, hearings before the Senate Intelligence Committee and joint hearings before the Select Senate and House Committees on the Iran/Contra matter have demonstrated the need for significant action in order to establish the appropriate role for congressional oversight pursuant to the checks and balances contemplated by the U.S. Constitution. Notwithstanding any action which may be taken by the President by way of Executive order on this issue, legislative change is necessary to impose statutory requirements governing this or future administrations where any such Executive orders might be countermanded.

This bill has four goals:

First, to encourage timely consultation with key Members of Congress to obtain the benefit of their insights to avoid future blunders like the transaction with Iran on arms for hostages;

Second, to provide for effective congressional oversight by specific statutory requirements establishing precise time limits for notice where the President decides not to consult in advance;

Third, to establish mandatory penalties where executive branch officials make false statements to congressional committees; and

Fourth, to add an Inspector General for the Central Intelligence Agency to help assure lawful internal compliance on matters which do not come within the purview of congressional oversight.

SECTION 2

Notwithstanding the obvious failure of the executive branch to provide requisite information to Congress under the provisions of existing statutes, some have argued that there was compliance because of the vagaries of current law. In order to prevent a repetition of such conduct, the National Security Act of 1947 (50 U.S.C. 413) and section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422), known as the Hughes-Ryan amendment, are made more specific by this bill. Existing law prohibits the expenditure of funds by the Central Intelligence Agency for covert activities "unless and until the President finds that each such operation is important to the national security of the United States." Efforts have been made to justify the CIA's action in the Iran/Contra matter by contentions that an oral finding was sufficient and that a later written finding could retroactively justify earlier covert action.

This bill unequivocally requires that the finding be in writing and that the President shall give notice and a copy of any finding to the House and Senate Intelligence Committees contemporaneously with the finding, but in no event later than 24 hours after it is made. A limited exception is provided for an oral finding in situations where the President deems that immediate action by the United States is required to deal with the emergency situation affecting vital national interests and time does not permit the preparation of a written finding. In that event, the finding must be immediately reduced to writing after the action is orally approved, with the written finding to be completed no later than 24 hours after the making of the oral finding.

Where an oral finding is used, there is the additional requirement that the written finding shall include a statement of the reasons of the President for having first proceeded with an oral finding. This bill further provides that a finding shall be effective only with respect to operations beginning after the finding was made by the President in order to preclude any contention that the finding may retroactively cover prior CIA operations.

These statutory requirements leave no room for doubt that no covert action may be undertaken without complying with the requirements of a written finding and the requisite notice, by any personnel of the executive branch or anyone acting on its behalf including foreign governments or any individual. This specific provision would preclude any future argument that the delivery of arms to Iran was legally justified, after the fact, by a retroactive finding or that other entities or actors were not bound by the same limitations affecting the CIA.

This bill further removes any possible ambiguity in section 501(b) of the President's obligation to notify the House and Senate Intelligence Committees of covert action. Section 501(b) now provides:

(b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

The phrase "for which prior notice was not given under subsection (a)" carries the direct implication that the House and Senate Intelligence Committees should have been "fully and currently informed" of covert activities which are covered by section 501(b). It is obvious that the President did not comply with section 501(b) to inform the Intelligence Committees in a "timely fashion" where some 14 months elapsed from the time of the first covert action on the Iranian arms sales to the time that information reached the Intelligence Committees. Yet, some have contended that the exigencies of the situation excused the President from giving earlier notice so that requirements of a "timely fashion" were observed.

This bill removes any room for such future arguments by requiring the President to give notice to the Intelligence Committees contemporaneously with any written or oral finding. In order to remove any conceivable ambi-

guity as to the meaning of "contemporaneously," a time certain is added requiring the information to be transmitted no later than 24 hours after the making of an oral or written finding. Absent the experience of the Iran/Contra matter, it would seem unnecessary to put a 24-hour limitation after the requirement of "contemporaneously," but the recent experience that a time certain be affixed so that no one can later claim that "contemporaneously" means days, weeks, months, or even years later.

The requirement that the President shall contemporaneously inform the Intelligence Committees is intended to provide a procedure where the Intelligence Committees might be consulted in advance so that the President would have the benefit of their thinking if he so chose. The language of section 501(a)(1) to keep the Intelligence Committees "fully and currently informed of all intelligence activities" suggests a design for congressional input. Even with such contemporaneous information and the possibility of congressional input, it would remain within the President's power to proceed or not as he chooses.

There is much to recommend the availability of the institutional experience of the Senate and House Intelligence Committees. Had there been a review by the Intelligence Committees of the sale of arms to Iran, it is likely that the policy would never have been implemented. Had members of the Senate and House Intelligence Committees joined the Secretary of State and the Secretary of Defense and others in discouraging Presidential action in selling arms to Iran, the President might well have ceased and desisted on his own. Had the President declined to terminate that disastrous policy, then the Congress might have utilized its power to terminate funding through its appropriations powers, thereby ending the sale of arms to Iran.

The President's obligations on congressional oversight are further limited by excluding notice to the Intelligence Committees where the President determines that it is essential to limit such disclosure to meet extraordinary circumstances affecting the vital interests of the United States. In that event, such notice is to be given only to the chairman and ranking minority members of the Intelligence Committees, the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate. That more limited disclosure gives sufficient assurances of preservation of secrecy. A valid argument could be made that notice should go only to the leadership of both Houses in the interests of secrecy, but the greater familiarity of the chairman and vice-chairman of the Intelligence Committees warrants their being included.

SECTION 3

This bill further provides for a mandatory sentence of imprisonment for any officer or employee of the United States who provides false information to any committee or subcommittee of the Senate or House of Representatives. No matter how rigorous or exacting statutory requirements may be, the oversight function of Congress cannot be accomplished if executive branch officials present false or misleading testimony to the Congress.

This is especially problemsome where witnesses appear before the Intelligence Committees in a secret session. Where evidence is provided in a public session, there is an opportunity for others to learn of the false information and to come forward with the truth so that the congressional oversight committees can perform their functions. That is not possible where key executive officials appear in secret and provide false information to the Oversight Committees. Under those circumstances, the committees realistically have little or no opportunity to determine the truth.

While false official statements to such congressional committees are covered by section 1001 of the Criminal Code, (18 U.S.C. 1001), this kind of misconduct, either in secret or public session, is so serious that it warrants a mandatory jail sentence.

While there has been experience with witnesses who return to the committee to apologize for prior testimony, such apologies fall far short of correcting the enormous damage which has been done. Obviously, there is no way to know how much false, deceptive, or misleading evidence has been presented in secret where the truthful information has never come to the attention of the committees. This mandatory jail sentence is intended to put members of the executive branch on notice that the matter is extremely serious as reflected by the heavy penalty.

It is obviously well within the ambit for any witness who appears before a congressional committee to decline to answer any question until that witness has had an opportunity to reflect on the question or to consult with his or her superior. Simply stated, it is understandable if a witness declines to answer or asks for a delay, but it is intolerable for false or deceptive answers to be made. The committee would doubtless consider not insisting on an answer where some reason was advanced for nondisclosure. Where any witness chooses to decline to answer a question, there is always an opportunity for further consideration by both the witness and the committee.

In any event, an enforceable legal obligation to answer does not arise as a practical matter until citation for contempt of Congress is obtained and the court orders an answer. It is only at this point that a witness is subject to a sanction for contempt for failing to answer.

This bill further provides that anyone who gives such false or deceptive information may recant and avoid possible criminal liability by correcting the record within 5 days. This 5-day period should be ample time for rethinking the issue and time to make the appropriate correction.

SECTION 4

The Inspector General Act of 1978, Public Law 95-452, established independent Presidentially-appointed and Senate confirmed IG's in 19 Federal departments and agencies. The creation of these statutory IG's has improved the effectiveness of the Federal Government. The act also ensures that both the Congress and agency heads are receiving independent assessments of programs and operations for which they are accountable or have oversight responsibility. However, the CIA was not included.

Currently, the Inspector General for CIA is usually appointed internally. That process is not conductive to objectivity.

A prime example was the CIA's mining of the harbors of Nicaragua. The CIA official with operational responsibility for that action was next appointed to the position of Inspector General. While he disqualified himself from the ensuring IG investigation of that activity, it is difficult to calculate the objectivity of that investigation by virtue of his presence.

The Intelligence Committee has had access to some IG reports in past years, but for the most part, it has not exercised oversight over the intelligence community's IG's. That has been a responsibility of the Intelligence Oversight Board. The Iran-Contra investigations have raised serious questions about the effectiveness of that body. The Tower Commission found that (III-22): "Lieutenant Colonel North and Vice Admiral Poindexter received legal advice from the President's Intelligence Oversight Board that the restriction on lethal assistance to the Contras did not cover the NSC staff." In addition, review of Executive Order 12334, which establishes the Intelligence Oversight Board, and the operations of the Board itself reveal that the Board is not adequately staffed, that the quality of its legal counsel has been demonstrated to be less than thorough and experienced, and, finally, that its effectiveness is not held in high regard by the Intelligence Committees.

This bill would greatly increase the independence and credibility of the CIA's Inspector General by making the IG a permanent, statutory official subject to appointment by the President and confirmation by the Senate with limitations on grounds for dismissal. To increase accountability to Congress, semiannual and special reports by the Inspector General must be promptly submitted to the Intelligence Committees, as well as to the Director of the CIA.

Secrecy is provided for, as is subpoena power. While the Director may halt an audit or investigation, he may do so only if:

First, it concerns an ongoing operation;

Second, he finds it vital to national security; and

Third, he reports to the Intelligence Committees within 7 days on the reasons.

The combined effect of an independent IG, mandatory penalties for deceiving Congress, and statutory requirements on notice to Congress on covert action along with written findings are therapeutic steps which should be taken in light of our experience from the Iran/Contra matter.

After the problems were publicly disclosed on the failure of the executive branch to notify the Intelligence Committees on the sale of arms to Iran, there was an exchange of correspondence between the President and the Senate Intelligence Committee. The President wrote to Chairman BOREN by letter dated August 7, 1987, expressing his support for certain key concepts recommended by the Senate Intelligence Committee. Paragraph 6 of the President's letter stated:

In all but the most exceptional circumstances, timely notification to Congress under Section 501(b) of the National Security Act of 1947, as amended, will not be delayed beyond two working days of the initiation of a special activity.

In my judgment, where notice may not be given even in "the most exceptional circumstances" the fundamental requirement of notice is defeated because it remains with the purview of the President to determine what constitutes the "exceptional circumstances." Precise requirements are necessary as set forth in this proposed legislation.

By Mr. LAUTENBERG:

S. 1819. A bill to amend the National Driver Registration Act of 1982 to assist in the identification of operators of aircraft who have driving problems by permitting access to the National Driver Register; to the Committee on Commerce, Science and Transportation.

IDENTIFICATION OF AIRCRAFT OPERATORS WHO HAVE DRIVING PROBLEMS

Mr. LAUTENBERG. Mr. President, I rise today to introduce a bill aimed at closing a serious loophole in our aviation safety network.

This bill would authorize individuals to provide the Federal Aviation Administration with access to the National Driver Register [NDR] in reviewing pilot applications for medical certification. It would allow the FAA to use this information to verify information provided by pilots, and to help evaluate whether the airman meets minimum medical standards prescribed by the FAA.

The FAA would not be provided access to information more than 3 years old, unless that information pertains to a revocation or suspension of a drivers license that is still in effect. The FAA would not be permitted to use the information for purposes not set out in statute.

In addition, the airman would be provided the opportunity to review the NDR information and comment on it in writing. This would protect against false identification of an applicant, and give the applicant the opportunity to provide any explanation for information in the NDR.

With enactment of this provision, it is intended that the FAA will promulgate regulations to require authorization of access to the NDR as a condition of the medical certification process.

In order to legally fly, any pilot must receive regular medical certification. The majority of the exams are performed by private physicians approved by the FAA.

There are several classes of certification. First-class certification is for airline pilots, and must be renewed every 6 months. Second-class certification is for commercial pilots, flight engineers, and flight navigators. It is renewed annually. Private pilots receive third-class certification, which must be renewed every 24 months.

Currently, the FAA requires pilots seeking certification to report drug or alcohol problems, including drunk driving convictions. This is a requirement too many do not comply with. And the FAA does not know who those people are. Therein lies the problem.

Although the majority of pilots take the responsibility that comes with their license seriously, there are those that don't. There are those who might drink and fly. There are those who would not comply with FAA's reporting requirements.

A report by DOT's inspector general in February of this year revealed that this reporting system is faulty. There are 711,648 active airmen now certified by the FAA. The inspector general found that about 10,300 of these pilots had their driving license suspended or revoked for DWI convictions in the last 7 years.

However, 7,850 of the 10,300—of 76 percent—did not report this information to the FAA.

These are the people—those who intentionally do not comply with Federal requirements—whom this bill would specifically address.

Mr. President, let me cite a few examples of where the voluntary reporting system proved lacking.

In February 1986, a commercial cargo pilot was killed when his plane crashed in Tennessee, 3 hours after leaving Milwaukee. His blood alcohol content [BAC] was found to be 0.158, four times higher than the level FAA considers the threshold of impairment.

A review of his driving record indicated a history of drunk driving; 18 months earlier, he demolished his van while driving 100 miles per hour. At that time, his BAC was 0.26. From 1981 to 1984, he had seven DWI convictions, and had his drivers license revoked.

Yet, he could still fly. And the FAA had no way of knowing about his record.

The inspector general's investigation turned up 262 first-class pilots with at least 1 drunk driving conviction. They included a pilot who had two separate DWI convictions, resulting in a 5-year revocation of his drivers license., The IG also found 29 second- and third-class pilots who had 3 or more DWI convictions since 1983. Combined, the 29 pilots had 94 DWI convictions in that time. This included 1 third-class pilot who had 3 convictions and had his license suspended for 10 years.

Yet, they all could fly, and the FAA had no way of checking into their records.

Mr. President, this is a gap we need to close. A driving record can indicate a pattern of behavior. If someone has a history of drunk driving convictions, we have a right to think about whether we want to allow that person in the cockpit of a plane.

The FAA already has the interest in knowing. Its medical certification application form asks for a great deal of information about a pilot's background. Included on that form is an inquiry about whether the applicant ever had, or now has traffic or other convictions.

But, under current law, the FAA cannot verify the information the applicant provides. The FAA should not fly blind while some pilots fly drunk. This bill would remove the obstacle that prevents the FAA from confirming pilots' backgrounds.

This change has long been endorsed by the National Transportation Safety Board, and is supported by the Department of Transportation. I would note, Mr. President, that similar provisions were included in the Rail Safety Improvement Act, which I introduced in April, and in S. 1539, the rail safety legislation subsequently reported by the Senate Commerce Committee.

I intend to offer this bill as an amendment to the Airport and Airway Capacity Expansion Act when it is considered on the Senate floor. I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1819

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".